Boyertown Packaging Corporation *and* Graphic Communications Union, Local 756–S, Graphic Communications International Union, AFL–CIO. Cases 4–CA–17929 and 4–CA–18087

June 18, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On March 12, 1990, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondent's exceptions and cross-exceptions to the judge's decision with supporting brief. The Respondent filed an answering brief to the General Counsel's cross-exceptions and a reply brief to the General Counsel's answering brief to its exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Boyertown Packaging Corporation, Boyertown, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Barbara A. O'Neill, Esq., for the General Counsel.
Malcolm L. Pritzker and *Steven R. Semler, Esqs.*, for the Respondent.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This proceeding was tried before me at Reading, Pennsylvania, on November 15 and 16, 1989, pursuant to charges timely filed and complaints issued, and subsequently amended, alleging that Boyertown Packaging Corporation (Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to furnish Graphic Communications Union Local 765-S, Graphic Communications International Union, AFL–CIO (Union) with certain information relevant to a grievance filed on behalf of one Helen Rissmiller, and violated Section 8(a)(4), (3), and (1) by issuing warnings to Terry J. Augustine because he engaged in union activity and filed charges and gave testimony before the Board. Respondent denies these allegations.

On the entire record,[1] and after considering the comparative testimonial demeanor of the witnesses and the posttrial briefs of the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material to this proceeding, a corporation engaged in the packaging business with its principal office in Boyertown, Pennsylvania, where Respondent, in conducting this business, during the year preceding the issuance of the complaint purchased and received goods valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

General Counsel alleges, Respondent admits, and I find that the following named individuals are, and have been at all times material herein, occupying the positions set forth opposite their respective names, and are now, and have been at all times material herein, supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

[1] The unopposed motions to correct the record filed by General Counsel and Respondent are granted and the record is accordingly corrected.

[1] The General Counsel's motion to strike the Respondent's exceptions is denied as the Respondent's exceptions and brief substantially comply with Secs. 102.46(j), 102.46(b)(1)(ii), and 102.46(b)(I)(iv) of the Board's Rules and Regulations. In addition, the General Counsel has shown no prejudice due to any alleged deficiency in the Respondent's exceptions. The Respondent's cross-motion for sanctions against the General Counsel is denied.

[2] Pursuant to Rule 102.46(g) of the Board's Rules and Regulations, special leave is given to the Respondent to file its reply brief. The General Counsel's motion to strike Respondent's reply brief is denied. The General Counsel's request to file a response to the Respondent's reply brief is also denied. In light of our decision in this case overruling the Respondent's exceptions, the General Counsel will not be prejudiced by this denial.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] Member Devaney agrees with his colleagues that the Respondent violated Sec. 8(a)(5) of the Act by failing to provide the Union in a timely manner with the names of the employees whom the Respondent interviewed in the course of its investigation of Rissmiller's driving. Contrary to his colleagues, however, Member Devaney would also find that the Union's original January 13, 1989 request for the names of ''complainers'' (i.e., the names of employees who gave statements critical of Rissmiller's driving) was a valid information request to which the Respondent was obligated to respond. In reaching this conclusion, Member Devaney emphasizes that there was no evidence that the Union had engaged in the type of intimidation or coercion that the judge found ''the Board's decision in Anheuser-Busch was designed to prevent,'' and that the Respondent presented no other special circumstances that would otherwise justify its refusal to supply the names originally requested by the Union. Cf. *Brown & Sharpe Mfg. Co.*, 299 NLRB 586 (1990), and *Pennsylvania Power Co.*, 301 NLRB 1104 (1991).

Milton G. Berger—Manager of Slit and Finish Department and Lamination Department
John Wood—Technical Manager/Quality Control Manager
Jeffrey M. Hursey—Vice President of Human Resources
Ace Willard—Night-Shift Supervisor
Tom Galloway—Unit Manager
Jim Gregor—Second-Shift Supervisor
Larry Reppert—Ink Department Supervisor
Ed Matla—Manager of Maintenance Engineering

IV. THE ALLEGED UNFAIR LABOR PRACTICES[2]

A. *Preliminary Findings of Fact*

The Union is the exclusive bargaining representative of a unit of Respondent's employees covered by a collective-bargaining agreement between the Union and Respondent effective July 23, 1988, to July 22, 1991. This is the latest in a series of labor agreements between these parties covering the same employees. Terry J. Augustine has been the union president since May 1985, and previously served in that capacity from September 1983 to January 1985. During his tenure as union president, Augustine has been very active in filing and participating in the investigation of unfair labor practice charges against the Employer, pressing numerous grievances, and, in early 1989, attempting to organize another company owned by Respondents' parent in Harrisburg, Pennsylvania. Respondent's evaluation of Augustine's activities is reflected in a letter to all employees from Lamar Hartline, Respondent's vice president and general manager, dated June 7, 1989, reading as follows:

> Re: *Working Against One Another or With One Another*
>
> On 5/16/89 an OSHA inspection was conducted at Plants #2 and #3 at BPC as a result of the attached alleged safety violation filed by the local union president.
>
> While all twelve of the complaints were found invalid by the OSHA inspector, nineteen minor items, such as blocked fire extinguishers or missing guards, were identified. Most of these have already been corrected by the company. Only a few of these minor corrections were reported or discussed by the Joint Safety Committee, which was set up for the purpose of keeping this plant safe despite the fact that the local union president is a member of the Joint Safety Committee.
>
> This OSHA charge is just the latest instance of what the company perceives to be harassment of the company by the current leadership of Local 756-S.
>
> This company is not anti-union. I am, however, concerned that the general work force may not be aware of the facts that cause the company to believe the current local union leadership is not interested in working together to build job security at BPC. Let me review what has occurred over the past four years.
>
> 1. This union leadership has filed 20 alleged safety violations with OSHA which resulted in two general inspections. No major citations were ever issued by OSHA. This local union leadership has bypassed what had been an effective safety committee in its attempt to harass the company. Twenty-eight union-appointed members of the safety committee have been replaced by the local union leadership since 1985.
> 2. This local union leadership has filed 24 unfair labor practices with the National Labor Relations Board. They have won none of them.
> 3. This local union leadership has filed for 30 arbitrations. Two were won by the company, one was won by the union, four were resolved, three were granted, and seventeen were later withdrawn by the union.
> 4. This local union leadership has filed 285 grievances. 132 were resolved, 107 were denied, and the rest they withdrew.
> 5. This union leadership attempted to organize the employees at Harrisburg with local union dues. They were defeated by 70% of the vote.
> 6. This union leadership has been paid by the union for over 535 days of union business time in order to do all the above.
> 7. BPC union members have paid over $220,000 in dues since 1985. As of 3/2/88, the Local has $25,349 left in assets reported on their latest LM-3 form to the Department of Labor. We presume that a substantial sum has been paid by the local treasury in fees and expenses to finance a number of activities against the company.
>
> BPC had to spend over $350,000 in legal fees alone to respond to unfounded charges. This does not include time and energy spent away from running the business. I wish we could have used this money on equipment which could promote added job security.
>
> The recent major layoffs we have experienced re-emphasize the tough industry we compete in. As long as the current local union leadership functions in the manner of the last four years, we will be working against one another instead of with one another.
>
> I want you all to be aware of how these actions affect each employee at BPC. As long as this is the environment here, we will never be as successful or secure as I'm sure most of us wish we could be.[3]

The union leadership referred to in the letter is, I find, Augustine who credibly testifies he has filed 10 or 11 charges against Respondent,[4] has filed almost 300 grievances during his tenure as the Union's president, filed an OSHA complaint

[2] The facts set forth herein are based on a composite of the credited aspects of the testimony of witnesses, the exhibits, and the probability of the facts found. Although I do not advert to all of the record testimony or documentary evidence, it has been weighed and considered. To the extent that testimony or other evidence not mentioned herein might appear to contradict the findings of fact, that evidence has not been overlooked but has been rejected as incredible, lacking in probative worth, surplusage, or irrelevant. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966). I have credited some witnesses on some points but not others. This is not unusual. It is a rare witness whose recollections are correct in every item placed before him and a trier of fact may properly credit some of a witness' testimony without believing all of it. *NLRB v. Universal Camera Corp.*, 179 F.2d 49 (2d Cir. 1950), vacated on other grounds 340 U.S. 474 (1951). In making these credibility determinations I have considered the comparative testimonial demeanor of the opposing witnesses where necessary.

[3] Attachments to the letter are deleted.

[4] Among charges filed by Augustine are those in Cases 4–CA–17813 filed January 9, 1989, Case 4–CA–17873 filed February 6, 1989, Case 4–CA–17929 filed March 1, 1989, and Case 4–CA–18087 filed May 18, 1989, all of which he signed.

in 1985 regarding a water leak, and headed the organizing campaign referred to in the letter. There is no evidence of any similar conduct by any other member of the Union's leadership. The letter makes it clear Respondent was unhappy with Augustine's charge, grievance, and OSHA filings as well as his organizing efforts, and considered this conduct to be ''harassment of the company'' by Augustine.

Respondent's attitude toward Augustine's activities as the Union's president, which are all protected by the Act, must be considered in evaluating the allegations that he received unlawful warnings because he engaged in such activities, but it has no bearing on the allegations of unlawful failure to furnish information relating to the Helen Rissmiller grievance to which now turn.

B. *The Alleged Refusal to Furnish Information*

The complaint contains the following allegations:

> 8. On or about January 13, 1989 (orally) and again on January 24, 1989 (in writing) the Union requested the Respondent to furnish the Union with certain information in connection with the processing of Unit grievance #88-53, including *inter alia*, statements made by employees, and the names of employees making the statements, relative to Rissmiller's work performance.
>
> 9. From on or about January 24, 1989, until on or about March 31, 1989, the Respondent has failed and refused to furnish the Union the names of employees referred to above in paragraph 3.
>
> 10. Since on or about January 24, 1989, the Respondent has failed anl refused to furnish the Union with summaries of employees' statements referred to above in paragraph 8.
>
> 11. The information requested referred to above in paragraphs 8, 9 and 10 is necessary for, and relevant to, the Union's performance of its function as the exclusive representative of the Unit.
>
> . . . .
>
> 20. By the act and conduct described above in paragraphs . . . 10 . . . the Respondent has . . . been engaging n unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

On October 28, 1988, Helen Rissmiller was suspended for 5 days for inattention to duties. This infraction was detailed by Respondent as follows: ''On 10/26/88 employee while driving lift truck, drove into refrigerator and in turn hit power converter and pulled safety conduct out of wire housing exposing wires. Inattention knocking water container on floor by power converter.''

Rissmiller filed a grievance. At a third-step grievance meeting on January 13, 1989, after Kathy Kane, Respondent's manager of human resources, stated the company had received complaints from members of the Union regarding Rissmiller's driving, Augustine asked for the names of the complainers and their statements.[5] Augustine testified that Kane said she would provide the requested information. Kane testified that she did not say she would provide it. The recording secretary's notes of that meeting show that Augustine made such a request but do not show any response by Kane. If Kane had, as Augustine claims, promised to provide the information, it is most unlikely the recording secretary would not have noted it. I credit Kane who appeared to be truthfully testifying to that which she recalled. It appears there in fact were no *written* statements in Respondent's possession.

By letter of January 2, 1989, Augustine requested Kane to furnish the following and other information concerning Rissmiller's grievance:

> Statements made by employees, and the name of the employees making the statements relative to Rissmiller's work performance. The company alleged that this was a factor in issuing discipline (Union has previously requested this information on 1/13/89).

Kane did not respond to this request but, in reply to other requests, replied by letter dated January 30, 1989:

> As previously explained to you in the 3rd step grievance meeting, Helen Rissmiller has voluntarily resigned and is no longer an employee of Boyertown Packaging Corp. You should be aware of any prior corrective actions issued to Ms. Rissmiller because union shop stewards always are a part of disciplinary hearings, and I would hope the union maintains the copies of any employee corrective action that they are copied on by the company. In this instance I will duplicate the company's efforts by recopying you with her work record.

For reasons known only to him, Augustine chose to phrase his next letter of February 6, 1989, in terms not likely to endear him to Respondent. Thus he writes:

> Ms. Kane, Supervisor, Human Resources
>
> Thank you for your letters dated 1–30–89 which were delivered to my office with an envelope bearing the postmark dated 2–3–89. It appears that you are either backdating your letters in order to make them appear timely or you are experiencing a hell of a delay in your mail delivery system.
>
> As you know, your letters do not contain the information I requested and in some cases, you agreed to supply at our 3rd step meeting on 1–13–89 with witnesses present.
>
> For the time being, I will count your apparent antagonistic attitude as a result of your youth and inexperience as well as possible bad advice. It would be unfortunate if this is the type of labor/management relations your company hopes to encourage.
>
> You have left me no choice, however than to seek appropriate remedies in order to obtain the information the union needs to possess in order to fulfill our obligation to our membership.

On March 31, 1989, pursuant to advice of counsel who had been informed by a Board agent that the furnishing of

[5] Respondent's brief describing the exchange between Kane and Augustine on January 3 refers, inter alia, to G.C. Exh. 12, notes purportedly taken by the Union's recording secretary, which was rejected at hearing after Respondent objected to its admission. Respondent Counsel's citation of G.C. Exh. 12 fairly implies he has withdrawn his objection o that document. In the absence of objection it is therefore now received in evidence. Similarly, counsel for General Counsel now urges R. Exh. 9 which was rejected pursuant to her objection now be received, and has therefore withdrawn her objection. It is received.

the names of persons interviewed would resolve the charge against the company, Respondent's vice president of human resources, Jeffrey Hursey, wrote a letter to Augustine advising ''the company has investigated grievant's forklift driving history through interviews of the following unit personnel,'' and listed 11 names. At some time prior to April 11, Augustine old the Board Agent the Union would be willing to accept summaries of statements. The Board agent made a second call to Respondent's counsel and told him that if Respondent supplied a summary of the results of the investigation the Board would certainly dismiss the charge. On this representation, Respondent wrote to Augustine on April 1, 1989, advising. ''With respect to the Rissmiller investigation, the substance of our investigation (without waiving our contention that the union is not entitled to our investigative reports), is that the grievant's driving was unsatisfactory.'' In a letter dated April 14, 1989, and containing requests for information on several matters Augustine made the following requests relative to Rissmiller's grievance:

> 6) In response to our statement about the Rissmiller investigation, is it the company's position that interviews were conducted with the eleven named individuals named in your 3/31/89 letter, and the results of those interviews was that the company determined that the grievants driving was unsatisfactory?
>
> 7) For each of the named unit persons interviewed per your 3/31/89 letter, please provide the precise dates of the interview.

Hursey wrote back on April 24:

> 6) As stated in my letter of 3/31/89, the company during the course of its investigations spoke with several people and took its action based on the employee's record, which included our interviews of the previously named employees.
>
> 7) These interviews took place from 10/14/88 to 10/27/88.

Thus the situation rests.

Discussion and Conclusions

Much of the following discussion is of only academic interest because there is no persuasive evidence to contradict Kane's testimony there are no written statements of witnesses interviewed by Respondent regarding the Rissmiller affair, and the Union never requested the Respondent to provide summaries of any such statements.[6] The record shows that the Board agent told Respondent's counsel that the Board would dismiss the relevant charges if Respondent would supply a summary of the results of the investigation. Apart from the fact this is not on its face a reference to summaries of statements, it is not a request by the Union. The Board's agents are clearly not agents of either party to a charge, and the Board agent did not, so far as this record shows, represent to Respondent's counsel that he was asking for the summary on behalf of the Union. His representation to Respondent's counsel was that the Board as conditioning a dismissal of the charges on the furnishing of a summary of the investigative findings. In short, the Board agent represented that the Board was requesting the summaries be supplied. Parenthetically, the request for ''results'' was ambiguous at best and does not c]early refer to the materials, e.g., statement, on which the ''results'' were based.

Respondent has no obligation to furnish the statements of employee witnesses if they existed. *Anheuser-Busch, Inc.*, 237 NLRB 982, 984–985 (1978); *Manchester Health Center*, 287 NLRB 328 (1987). What the Union, i.e., Augustine, requested was the statements of employees who complained about Rissmiller's driving, not the statements of *all* witnesses speaking to her driving. Assuming arguendo this request was in fact reduced to summaries of such statements and communicated by the Union to Respondent, it amounts to the same thing. The Union wanted to know what the complainers had said and who they were. It does not seem logical that an employer can be required to furnish identifiable summaries of statements when it is not required to furnish the statements because such a solution runs counter to the Board's concerns with the dangers which it describes, in *Anheuser-Busch*, supra at 984–985, as the reasons for the rule it there prescribed in the following unambiguous terms: ''In any event, *without regard to the particular facts of this case*, we hold that the general obligation to honor requests for information . . . does not encompass the duty to furnish witness statements themselves.'' [Emphasis added.] Nothing could be clearer. The fact the Board also noted in *Anheuser-Busch* that the employer did furnish information including the substance of witness statements was clearly not a reason for the rule because the Board expressly disavowed any reliance on the particular facts of the case in arriving at the quoted holding. Moreover, General Counsel's citation of *Columbus Products*, 259 NLRB 220 (1981), and *Anheuser-Busch* for the proposition an employer is obligated to provide summaries is misplaced because the ''summaries'' in both cases were voluntarily provided.

With respect to the furnishing of names of witnesses, the Board expressly stated in *Anheuser-Busch*, footnote 5: ''An employer does have a duty to furnish a union, upon request, the names of witnesses to an incident for which an employee was disciplined.'' The witnesses in *Anheuser-Busch* were employees, unlike *Transport of New Jersey*, 233 NLRB 694 (1977), which required the production of the names and addresses of nonemployee witnesses, but *Anheuser-Busch* cites *Transport of New Jersey* in support of its holding employee witnesses names must be furnished. I am satisfied that Respondent was required to furnish the Union upon request with the names of all the employees interviewed concerning Rissmiller's driving. This is not what the Union first requested. What Augustine asked for was the names of the complaining witnesses, not the others. Revealing the names of only those who gave evidence damaging to Rissmiller is little different from delivering the statements of identified witnesses because the employer would, by naming those who complained, in fact make a statement on their behalf in their names. Moreover, the singling out of witnesses adverse to a grievance spotlights them as opponents to the grievants cause and, by so doing, unnecessarily enhances the possibility they may be subject to coercion or intimidation in an effort to persuade them to change or retract their oral reports previously given to the employer. It is precisely this possibility

[6] Contrary to General Counsel, the fact the complaint alleges an unlawful refusal to furnish summaries to the Union is either a substitute for a union request nor a directive to so furnish. It is only an allegation subject to proof.

of coercion and intimidation of witnesses that the Board's decision in *Anheuser-Busch* was designed to prevent, and I perceive no logical reason why that same policy of preventing coercion and intimidation of witnesses should not apply to requests limited to the names of employee witnesses who complained.

Accordingly, I conclude that although the Union was entitled to the list of names furnished, a short 11-name list which would have enabled the Union to quickly investigate what the facts reported by these witnesses were, it was not entitled to be told which witnesses testified adversely to Rissmiller. Although the Respondent furnished the 11 names, as I conclude it was required to do pursuant to the Union's January 24 request for ''the names of the employees making the statements relative to Rissmiller's work performance,'' this information was only furnished at the Board agent's request on or about March 31, 1989, in an effort to dispose of the Union's charge. A 2-month delay in furnishing the names, and then only furnishing them in what amounts to a settlement effort, is not in my view satisfaction of Respondent's obligation to promptly furnish, on request, the names of all witnesses who had given it information relative to the grievance, without singling any one or more out as persons who reported adversely to the grievant. I therefore conclude and find that Respondent's 2-month delay in furnishing such information has not been shown to be unavoidable, had a reasonable tendency to hinder the Union in its investigation of the grievance, and violated Section 8(a)(5) and (1) of the Act. See, e.g., *FMC Corp.*, 290 NLRB 483 (1988), wherein the Board found a 2-month delay in furnishing requested information to be violative of Section 8(a)(5) and (1).

General Counsel's contention that Respondent misled the Union by providing it with a list of 11 names including names of employees who may have given statements favorable to Rissmiller presumes Respondent was required to sort out and supply only the negative witnesses' names. I have found Respondent was not so required. Moreover, I do not find it either material or unusual that the Union found no employee who complained because there is no proof the Union interviewed all 11 employees, not a particularly onerous task, and because it is not uncommon for individuals to temper their opinions in accord with the identity of those who seek it. Neither do I conclude Respondent misled the Union into believing it had ''statements,'' and here I believe General Counsel must mean written statements, because Respondent never claimed to have any. The mere fact Respondent claimed it had investigated and interviewed employees does not mean producible ''statements'' existed, nor does it provide any basis other than pure speculation on which to form a belief they did exist.

C. *The Discipline of Terry Augustine*

Respondent issued warnings to Augustine on May 1 and 26, 1989. The first was a verbal warning for the asserted reason, ''Violation of Company Posted Rules and regulations #2 which states 'You are expected to be in your work area during work hours.''' The second was a written warning reciting Augustine violated ''Company Rule #25—Disrespectful conduct including abusive or threatening language toward management, other employees or visitors.''

The May 1 warning is based on Respondent's version of Augustine's conduct on April 24, 25, and 26, 1989. John Wood, Respondent's technical manager, testified that he first observed Augustine standing near the trash compactor at 10:10 p.m. when employee Doug Diener was bringing trash to the compactor. Wood further states that Augustine was in the same place when Wood took trash to the compactor at about 10:25 or 10:30 p.m. as Wood prepared to leave the plant, which he did shortly thereafter. When he left Augustine was still in the trash compactor area. Wood is certain that his observations of Augustine were not between 9 and 9:15 p.m., Augustine's break period. Wood and Tom Galloway, Respondent's unit manager, agree that Wood told Galloway on April 25 that he had observed Augustine in the compactor area on April 24, away from his work station. Wood avers he reported this because Augustine's presence in the trash compactor are for a period of time seemed unusual to him.

Augustine testified that he was in the warehouse at the trash compactor for about 3 or 4 minutes during his break period from 9 to 9:15 p.m., on a day which may have been April 24, during which time he had a discussion with Doug Diener, janitor, who asked Augustine, who is a member of the safety committee, why Diener could not use a forklift rather than a handtruck to move heavy boxes. Augustine says he promised to check with the Company. He does not explain how it came to pass that this meeting took place, by accident or prearrangement. Diener was not a witness in this proceeding. Augustine recalls seeing John Wood throw something in the trash compactor during the discussion with Diener. On cross-examination, Augustine opined that he could have gone to the temperature control makeup area adjacent to the trash compactor for a couple of minutes shortly before the end of the shift at 11 p.m. When asked if he denied being at the trash compactor from 10 to 10:25 p.m. on the night in question, Augustine responded he had no recollection of then being there. Failure of recollection is not a denial. Employee Harvey Werstler reports that he was with Augustine during the 9 p.m. break on April 26, his birthday, when Diener approached Augustine and went with Augustine to the trash compactor area. Bearing in mind that Werstler is the Union's vice president and therefore probably favorably disposed toward the Union's charges, he appeared to be candidly testifying and he can reasonably be expected to know what happened on his birthday. Both the testimony of Wood and that of Werstler was believable and seemed credible. The testimony of one does not directly contradict that of the other. It is quite possible that Augustine talked to Diener on two occasions. He believes he may have gone to the area adjacent to the trash compactor for a couple of minutes shortly before 11 p.m. and may have been there on April 4, and simply states, ''I have no recollection of being there,'' when asked if he was at the trash compactor from 10 to 10:25 p.m. The matter is not entirely free from doubt, but on the evidence before me, particularly the testimony of Wood and Werstler who both appeared credible and whose testimonial demeanor was equally impressive and superior to that of Augustine who here was, in contrast to his testimony on some other matters of lesser importance uncertain on matters of considerable importance to an allegation regarding his conduct. I am persuaded, absent the benefit of Diener's testimony, it is not unreasonable or improbable to conclude that Augustine may have talked to Diener on two occasions, the

one reported by Wood on April 24 and the one reported by Werstler on April 26.

Jeffrey Hursey, Respondent's vice president of human resources, testified that after he finished speaking to employee Fred Gehringer about 4:15 p.m. on April 25, and as he was leaving the area, Augustine left his machine and went over to talk to Gehringer. Returning through the department about 15 minutes later, says Hursey, he observed Augustine was still talking to Gehringer. Hursey and General Foreman Asa Willard credibly agree and I find that Hursey called Willard on April 25 and asked if Augustine had permission to leave his work area to talk to Gehringer. Willard said Augustine had not asked for permission. Willard went to the slit and finish department and found Augustine was working at his job. Unit Manager Tom Galloway credibly testified that Hursey also told him Augustine was absent from his machine talking to Gehringer for about 15 minutes on April 5 after 4 p.m.

Augustine claims he was in a meeting with Galloway on April 25, and notes which he represents were accurately made on April 25, as they do indicate, contain notations the meeting lasted from 3:50 to 4:50 p.m. Galloway denies meeting with Augustine on April 25, and points to his notes and desk calendar indicating meetings with Augustine on April 24 and 27. Augustine's timecard shows he was meeting with Galloway at 3 p.m. on April 24 and 27. The timecard does not show Augustine had any meetings with management on April 25 or 26, but Supervisor Berger testified absence from work for a meeting with Galloway after first clocking in would not be noted on the timecard. The notes of neither witness are particularly convincing, and the timecard is not conclusive although it does corroborate Galloway there were April 24 and 27 meetings with Augustine.

Hursey credibly testified he was in New Jersey on April 24, was not in the plant where Augustine works on April 27, but was in that plant on April 25.

Augustine relates that, on the occasion I conclude occurred on April 25 but he places on April 26, he saw Hursey talking to Gehringer and, when Hursey left, he went to check some work on a machine next to Gehringer, and was talking to Gehringer when Hursey came back through the area. Gehringer does not recall the date, but remembers that, after he talked to Hursey, Augustine came to his work station and asked a work-related question. According to Gehringer, they talked for about 5 minutes during which Hursey walked by. The two thus generally agree on what happened, but they differ on the purpose of Augustine's visit. Augustine say he went to check the rewind work performed by Tom Albitz, and was approached by Gehringer who told him of some rewind work Gehringer had. Gehringer says Augustine came over to ask him about his rewinds because Augustine would be doing the next work on them and was out of work. The reason for Augustine's visit is probably not of great significance to this decision, but I am inclined to believe it more likely that Augustine visited Gehringer because he was curious about the reason for the conversation with Hursey. I suspect that is what they most likely discussed, but suspicion is not evidence.

After receiving the reports of Wood and Hursey, Galloway relayed them to Supervisor Gregor, and instructed Gregor to watch Augustine on the night of April 26 and report his observations to Galloway. Gregor testified that he noted Augustine was absent from his machine from about 10:15 p.m. until some 15 minutes later when he emerged from the make ready department and made a 10-minute phone call before returning to work, all without requesting Gregor's permission to shut down his machine, leave the area, or make a phone call. Gregor states that Augustine's machine was not running and he was not on breaktime while gone from the work area or on the phone. On April 27 Gregor reported to Galloway on these alleged peregrinations of Augustine on the night of April 6.

According to Augustine, he was working on the repair of a rack in his work area from 10:15 to 10:45 p.m. on April 6, only left the area to wash his hands during that time, does no recall spending any time on the phone during that period; and was not in the make ready room during that time. His testimony is supported by employees Allen Ritz and Thomas Albitz who testify they worked with him on straightening out the rack, from about 9:30 or 10 p.m. until about 10:30 p.m., according to Albitz, or from 10 p.m. for about 45 minutes according to Ritz who returned to the plant at 10 p.m. after taking an injured employee to the hospital. The testimony of Ritz and Albitz was convincing and, considering they are current employees not likely to deliberately fabricate testimony contradicting their immediate Supervisor Gregor who has direct control over their employment future,[7] I credit them and Augustine that they were indeed working on the rack located in their work area for a half hour or so from about 10 p.m. on. Accordingly, I do not credit Gregor's otherwise unsupported testimony that he watched the entire department area during the period of Augustine's alleged absence therefrom and would have seen the three employees working on the rack had they been so doing but did not see them, nor do I credit his description of Augustine's conduct during the time a preponderance of the credible evidence shows Augustine was in his work area assisting with the rack. Furthermore, I find it most improbable that Gregor, Augustine's direct supervisor, would not speak to Augustine regarding his absence or use of the phone if it in fact had happened. Merely observing and saying nothing about such an alleged violation of company policy fairly implies condonation of such conduct, yet Gregor does not claim he said anything to Augustine about it.

I have concluded that Augustine most likely was absent from his work for a period of time without permission on two of the three occasions cited by Respondent as reason for the oral warning, but I also find it passing strange that not one of those serving or receiving reports of these infractions said a word to Augustine about it before issuing the oral warning. Augustine was not questioned, cautioned, or counseled about any of these three incidents before he was given the warning, nor does it appear Respondent checked with Diener or Gehringer regarding the content of their discussions with Augustine on the dates and in the places at issue. This failure to investigate or, at the very least, remind Augustine of his obligations with respect to absences from his work station on either of the first two occasions complained of, coupled with Galloway's instructions to Gregor with respect to watching Augustine, smacks of an effort to build a case for discipline rather than an effort to correct Augustine's behavior. It also seems peculiar that Galloway thought the

[7] See, e.g., *Federal Stainless Sink*, 197 NLRB 489, 431 (1972).

first two incidents, without further investigation, warranted surveillance of the activities of an activist union president who by all accounts was known to be constantly involved in grievances, charges, and meetings requiring his frequent absence from his work station. Respondent's lack of interest in Augustine's possible explanations is clearly shown by its preparation of the warning prior to its confrontation with Augustine, its failure to even then seek an explanation, and its abrupt presentation of a warning based on two uninvestigated incidents and a third uninvestigated report of events which I find did not occur.

Augustine has filed numerous unfair labor practice charges against Respondent, has pressed a large number of grievances, has filed charges of safety violations with OSHA, and actively led an effort to organize another of Respondent's locations. As Lamar Hartline's letter of June 7, 1989, reflects, Respondent knew this and was very critical of Augustine's activities. At the time of the May 1, 1989 warning, charges Augustine filed with the Board alleging Respondent committed unfair labor practices had resulted in a consolidated complaint issued in Cases 4–CA–17813, 4–CA–17873, and 4–CA–17929 on April 28, 1989, a Friday. I do not think it was clear that Respondent had received the complaint by May 1, but it certainly knew of the pending charges which led to that complaint. These factors combined with Respondent's failure to caution or direct Augustine to return to work on the occasions it relies on is more than ample to support an inference Augustine's union and charge filing activities constituted a motivating factor in the decision to warn Augustine. General Counsel has therefore established a prima facie case that the issuance of the May 1, 1989 warning violated Section 8(a)(4), (3), and (1) of the Act. The burden therefore now shifts to Respondent to show it would have taken the same action in the absence of Augustine's protected activity.[8] This it cannot do because I do not credit Gregor's report of Augustine's conduct on April 26, 1989. I find Respondent's conduct vis-a-vis Augustine was designed to discourage Augustine's enthusiastic charge filing and union activities. Accordingly, I conclude General Counsel has shown by a preponderance of the evidence the warning of May 1, 1989, violated Section 8(a)(4), (3), and (1) of the Act.

On May 26, 1989, Augustine was presented with a written warning alleging an infraction of ''Company Rule #25–Disrespectful conduct including abusive or threatening language toward management, other employees or visitors.''

The alleged misconduct occurred during an exchange between Augustine and Ed Matla, the plant engineer, on May 25. The two give widely differing accounts of what transpired.

According to Matla, he was talking to employee Thomas Albitz at his machine about 5 p.m. on May 25 when he noticed Augustine looking at him from Augustine's machine some 10 feet distant from that of Albitz. This, says Matla, moved him to say, ''Hi Terry, smile,'' which drew the following reply from Augustine: ''You are a f____g asshole; you are a f____g son of a bitch: I hated your f____g guts before and I hate your f____g guts now; you're a f____g liar, a f____g liar,'' followed by Augustine running to the telephone as Matla began to say that behavior could not be tolerated. Matla continues that shortly thereafter Department Manager Milton Berger and General Foreman Earl Werstler met him in the aisle and walked with him to Augustine's machine where Augustine yelled, ''[H]e is harassing me, I want him out of here.'' Matla testified that, upon hearing this, he said, ''This is a pissing contest and I am getting out of here,'' and then left the area.

Augustine's version is that, while he was standing at the back of Albitz' machine, Matla stopped talking to Albitz, approached Augustine, and told him to smile. Augustine recounts that told Matla he was not going to smile, which prompted Matla to ask what Augustine's problem was, which in turn drew Augustine's reply that his problem was that he did not like Matla and wanted Matla to leave him alone. Augustine recalls that Matla then repeatedly said Augustine had a bad attitude and could not talk to Matla that way. Then, testifies Augustine, he went to the telephone, called Werstler and Berger and asked them to come out and either ask Matla to stop harassing him, or tell Augustine he could walk away, Augustine says that, when Berger arrived, he asked Berger either to ask Matla to stop harassing him or permit Augustine to walk away. Berger and Matla left together. According to Augustine, this was all that was said. He testified that when Matla told him to smile ''there was something that I interpreted as antagonism in the way he said it.'' He further states that after he told Matla he was not going to smile, and Matla asked what his problem was, ''There was something in his tone of voice that offended me.''

Other witnesses to the incident were Thomas Albitz and Robert Kent.[9] Albitz did not hear all of the Matla/Augustine conversation, and only recalls hearing Matla saying ''smile'' to Augustine and Augustine replying he did not want to smile, did not like Matla, and just wanted to be left alone so he could do his job. Albitz' testimony is inconsistent with what he allegedly told Department Supervisor Milton Berger, on or about June 1,[10] i.e., he only heard Augustine saying he did not like Matla and wanted Matla to leave him alone, and Matla saying Augustine had a bad attitude.

Kent is a former president and vice president of the Union. His testimonial demeanor was one of resentment and reluctance, and his general attitude regarding the incident in question seemed to be summed up in his stated position that, ''It was none of my business.'' He testified that the only thing he heard was Augustine telling Matla he did not like him and Matla should get away from him and leave him alone. According to Milton Berger, Kent told him that Matla did not leave Augustine alone, and stated that Augustine was not threatening Matla. Kent testified that he told Berger he heard no abusive language. Kent denies Berger's testimony about their conversation. I do not credit Kent.

According to Berger, when he arrived at the scene of the Matla/Augustine altercation, Augustine was excited and shouting that Matla was harassing him, had no business there, and Augustine did not want to talk to him but wanted Berger to get Matla the hell out of there. Augustine calmed

[8] *Wright Line*, 251 NLRB 1083, 1089 (1980).

[9] General Counsel refers to Albitz and Kent as ''disinterested witnesses.'' Suffice it to say there was no truly disinterested witness before me.

[10] Berger says he investigated the incident a day or two after meeting with Augustine on May 26. Robert Kent says he was interviewed by Berger on May 26. Augustine says the investigation was about June 1. Kent's June 2 retrial affidavit says June 1. Berger's notes of the interviews are dated June 1. I conclude the evidence favors a conclusion of June 1.

down after Berger told him Matla had a right to be there and would not be removed.

Later that day Berger met with Matla, whom Berger describes as confused and disoriented, and reports that Matla gave him no details of the confrontation with Augustine, but merely kept repeating that he could not believe what had happened. Berger further testified that he met with Matla the following morning and was then told that Augustine had called him the names related by Matla hereinabove. Matla confirms that he met with Berger within the half hour after he left Augustine, but did not then tell Berger what Augustine had said. Matla explains that he did not then relay the words Augustine used because he was humiliated and embarrassed that the words had been said before two or three persons, and he did not want those words to be further diseminated throughout the plant or to hear other people calling him a ''f____g asshole.'' He agrees with Berger that it was the morning of May 26 when he first reported what Augustine had said. On May 26 Matla gave Berger the names of Albitz, Kent, and Mike Bernard as witnesses to his conversation with Augustine.

Berger testified that he decided to take action against Augustine on May 26 because he had no reason to doubt Matla and because when he arrived at the scene on May 25 the conditons were ''quite violent'' and Augustine was ''very excited.'' Accordingly, he met with Matla, Augustine, and Keith Rader, union shop committee member, that afternoon. I have considered the testimony of the four participants, noting there is considerable agreement generally as to what took place, and conclude that the following account based on credited portions of their testimony is a fair synopsis of what occurred: Berger opened the meeting by saying he could not tolerate Augustine's conduct the previous day. He presented Augustine with the written warning and asked him what took place. Rader asked what the alleged disrespect was. Berger merely replied ''profanities.'' Augustine said he had witnesses to the contrary. Augustine was not told what Matla claimed he had said.

Augustine filed a written grievance on May 31, and requested the company furnish details of the alleged infraction and names and summaries of statements of witnesses thereto. Berger responded by letter of June 1 wherein he related the words of Augustine as reported by Matla. As noted above, Berger interviewed Albitz and Kent on June 1. He also interviewed Mike Bernard who said he had heard everything, and asked why Berger did not keep Matla out of there because he was harassing.[11] Berger explains he could have retracted the warning to Augustine if he found the facts were different than he thought. Albitz and Kent had been previously interviewed by Augustine who testified he had talked to them immediately after Matla and Berger left on May 25 and both took notes of their observations because he felt Matla had provoked the incident and ''something seemed funny'' about Berger and Matla going into the office.

General Counsel introduced evidence that Robert Habley and Keith Hartzell had used profanity toward supervisors with no discipline therefor. Hartzell testified that, after Augustine showed him his name in the list of employees Hursey sent Augustine on March 31, 1989, as those the company had interviewed concerning Rissmiller's forklift driving history, he and Augustine went to Berger where he opened the conversation with ''what the f____ is my name doing on this list,'' and after some response by Berger, said he would probably sue Berger's ''f____g ass.'' Berger's testimony substantially corroborates Hartzell to this point. This incident occurred on April 26. Later that day Berger summoned Hartzell to the office. Berger credibly testified that he told Hartzell he was being reprimanded for his behlavior and he would be suspended for any repetition of it. Testimony to the contrary is not, credited. Berger was totally believable on this score.[12] Hartzell as not. I specifically find Hartzell was not told this was not a reprimand.

Hanley's situation was somewhat different.[13] On or about November 8, 1989, Berger remonstrated with him concerning his work performance. Both were a bit heated. Finally, Hanley angrily said, ''if you want to write me the f—k up go ahead and write me up, and I am sick of your f____g s____t, Berger.'' Berger then took Hanley and the shop steward into his office. They talked calmly about the problem and solved it. Berger assured Hanley he would not be fired or disciplined, and the conference ended amicably.

Discussion

Taking first things first, I credit Matla's version of the May 25 conflict with Augustine which had the ring-of-truth. Matla impressed me as a mild-mannered person genuinely distraught as a result of Augustine's epithets. Augustine is clearly a more aggressive individual given to caustic remarks and certainly without fear of Respondent, as evidenced by his February 6, 1989 letter to Kane, and the Union's newsletter of June 11, 1989, authored by him and referring to ''Lamar Hartlines' sickening propaganda . . . the companyies lies . . . company actions such as stealing pension money . . . screwing injured workers out of medical benefits . . . Lamar Hartline and his puppet Jeff Hursey,'' and similar characterizations. Augustine obviously is not bashful in dealing with the Respondent nor does he appear to be in any particular fear of reprisals. He is a forceful person who impressed me generally as one who would not suffer the slightest rebuke to go unanswered. His tendency to interpret or pretend to interpret innocent remarks as personal attacks is apparent in his testimony that he detected antagonism and cause for taking offense in Matla's innocuous comments. Moreover, he was evasive on cross-examination.[14] What happened, I believe, is that, after he had com-

[11] Bernard did not testify.

[12] Berger's contemporaneous internal memorandum which was not challenged for accuracy supports his testimony.

[13] There is no important difference between the testimony of Hanley and Berger and I find their testimony complementary rather than contradictory.

[14] Some examples of evasiveness follow:

Q. In working time in the plant in the presence of employees is it acceptable for a unit member of [sic] curse out a supervisor?

A. Define curse out.

Q. Using the words such and Your Honor I apologize for filling the record with these words. I am not comfortable doing it, but I have to. Using such words as fucking son of a bitch.

A. Again it would depend on the circumstanes. You might be talking about a job or trouble with a machine. I have heard both supervisors and bargaining unit people use that type language on a regular basis.

. . . .

Q. So those words are not used by a unit member to a supervisor?

A. If they are, they are done in poor taste.

Q. And in fact they are prohibited by rules aren't they?

A. It would depend on how you define the rule.

pleted his tirade against Matla, Augustine, who is a quick-witted individual, bethought himself to attempt to deflect possible adverse reaction by Respondent to his comments by going on the attack and claiming harassment. There is no evidence Matla ever harassed anybody before this incident, nor is there any reason shown why Augustine should be disenchanted with him. Augustine's own version of what was said does not support his claim of harassment. He was not believable and is not to be credited on this episode. The attempted corroboration by Albitz and Kent fails because I do not credit Kent and I conclude Albitz, caught between the union president and Respondent's management, temporized with a bowdlerized version of what he heard, which he conceded was only part of the conversation.

The treatment of Hartzell and Hanley after they had directed profanity toward a supervisor does not prove disparate treatment of Augustine. Hartzel was warned he would be suspended if he repeated his conduct. Hanley's brief exasperated outburst resulted from a heated disagreement with Berger over Hanley's work and did not rise to the level of the unprovoked attack leveled by Augustine on the unoffending Matla. Moreover, Hanley did thereafter calm down and work together with Berger to an amicable solution of their differences. There is no evidence that Augustine has ever made any effort to restore at least civil relations with Matla.

The record is clear that Respondent resented Augustine's protected activity described hereinabove, and I have found the May 1 warning was discriminatorily motivated. Further, I have no doubt Respondent would, given the chance, be delighted to rid itself of this vigorous union leader. Accordingly, I find General Counsel has made out a prima facie case a motivating factor for the decision to issue the May 6, 1989 warning was Augustine's protected activity. Nevertheless, his conduct on May 25, 1989, did run afoul of company rule 25 prohibiting, among other things, abusive or threatening language toward management, and was sufficiently serious to merit the warning he received. I am persuaded Augustine would have received a warning absent any union or charge filing activity. It is well settled that when an employer is presented with a bona fide reason to effect discipline it would have exercised in the absence of protected activities it may do so even if it was looking for an excuse to retaliate against an employee because of his protected activities.[15] This is what happened here, and I therefore conclude and find the May 26, 1989 warning did not violate the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to timely comply with the Union's request for the names of all witnesses to the work performance for which Helen Rissmiller received discipline.
4. Respondent violated Section 8(a)(4), (3), and (1) of the Act by issuing a warning to Terry J. Augustine on May 11, 1989, because he engaged in protected union activity and filed charges before the Board.
5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. Respondent did not commit any other unfair labor practices alleged in the complaint.

THE REMEDY

In addition to the usual cease-and-desist and notice posting requirements, Respondent will be required to furnish the Union, on its request, the names of witnesses to matters relevant and necessary to the Union's functioning as the collective-bargaining representative of Respondent's employees in the processing of grievances. Respondent will also be required to withdraw the warning issued to Terry J. Augustine on May 1, 1989, and to expunge from its files any reference of this warning, and to notify Terry J. Augustine in writing this has been done and that evidence of this unlawful action will not be used as a basis for future personnel actions against him.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Boyertown Packing Corporation, Boyertown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply in a timely and adequate manner with the Union's request for the names of all witnesses to incidents for which employees have been disciplined.

(b) Discouraging membership in or activities on behalf of the Union, or any other labor organization, by issuing warnings to employees or otherwise discriminating in any manner in respect to their tenure of employment or any term or condition thereof.

(c) Issuing warnings to employees because they have filed charges or given testimony under the Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

Q. And in fact they are prohibited by rules aren't they?

A. It would depend on how you define the rules.

Q. Okay. Directing your attention Mr. Augustine to what has already been received in evidence as Joint Exhibit 3. If you would kindly turn to item number 25. It is only a sentence and read it.

A. ''Disrespectful conduct including abusive or threatening language towards management, other employees or visitors.''

Q. You would certainly agree with me that referring to a supervisor as a fucking son of a bitch would be a violation of that rule wouldn't you?

A. Could be yes.

Q. You are not sure?

A. Well when you ask me that I have heard other supervisors refer to bargaining unit people that way and people refer to supervisors that way in the course of talking and not meaning anything serious about it

Q. Is is acceptable for you to refer to a member of management as a fucking son of a bitch?

A. Probably not.

[15] See, e.g., *Klate Holt Co.*, 161 NLRB 1606, 1612 (1966); *P. G. Berland Paint City, Inc.*, 199 NLRB 9276 (1972); *Stoutco, Inc.*, 218 NLRB 645, 651 (1975).

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) On request, in a timely and adequate manner furnish the Union with the names of all witnesses to incidents for which employees have been disciplined.

(b) Withdraw the May 1, 1989, warning issued to Terry J. Augustine.

(c) Expunge from its files any reference to the aforesaid warning issued to Terry J. Augustine, and notify him in writing this has been done and that evidence of this unlawful action will not be used as a basis for future personnel action against him.

(d) Post at its Boyertown, Pennsylvania, offices and facilities copies of the attached notice marked ''Appendix.''[17] Copies of said notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent's authorized agent, shall be posted immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that this notice is not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has been taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT issue warnings to our employees, or otherwise discriminate against them in any manner with respect their tenure of employment or any term or condition of employment because they support Graphic Communications Union, Local 765-S, Graphic Communications International Union, AFL–CIO, or any other labor organization, nor will we issue warnings to or otherwise discriminate against our employees because they file charges or give testimony under the National Labor Relations Act.

WE WILL NOT fail to comply in a timely and adequate mannner with the above-named Union's reqeust for the names of all the witnesses to incidents for which employees have been disciplined.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL withdraw the May 1, 1989 warning issued to Terry J. Augustine, and remove from our files any reference to that warning, and notify Terry J. Augustine in writing that this has been done and that evidence of this unlawful action will not be used as a basis for future personnel actions against him.

WE WILL, on request, in a timely and adequate manner furnish the above-named union with the names of all the witnesses to incidents for which employees have been disciplined.

BOYERTOWN PACKAGING COMPANY